

19105624D

SENATE BILL NO. 1602**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Obenshain)

Senate Amendments in [] — February 5, 2019

A BILL to amend and reenact §§ 9.1-101, 9.1-176.1, 18.2-57.3, 18.2-251, 19.2-74, 19.2-232, 19.2-303, 19.2-303.2, 19.2-305.1, 19.2-388, 19.2-390, 19.2-392, 53.1-23, 53.1-145, and 53.1-165 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-303.02 and 19.2-390.03, relating to reports to Central Criminal Records Exchange; duties and authority of the Central Criminal Records Exchange; unapplied criminal history record information.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, 9.1-176.1, 18.2-57.3, 18.2-251, 19.2-74, 19.2-232, 19.2-303, 19.2-303.2, 19.2-305.1, 19.2-388, 19.2-390, 19.2-392, 53.1-23, 53.1-145, and 53.1-165 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-303.02 and 19.2-390.03 as follows:

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

ENGROSSED

SB1602ES1

60 "Law-enforcement officer" means any full-time or part-time employee of a police department or
61 sheriff's office which is a part of or administered by the Commonwealth or any political subdivision
62 thereof, or any full-time or part-time employee of a private police department, and who is responsible
63 for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of
64 the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control
65 Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia
66 Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement
67 division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn
68 member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of
69 Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the
70 enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii)
71 animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer
72 appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the
73 investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate
74 allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee
75 with internal investigations authority designated by the Department of Corrections pursuant to
76 subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of
77 § 66-3; or (xii) private police officer employed by a private police department. Part-time employees are
78 those compensated officers who are not full-time employees as defined by the employing police
79 department, sheriff's office, or private police department.

80 "Private police department" means any police department, other than a department that employs
81 police agents under the provisions of § 56-353, that employs private police officers operated by an entity
82 authorized by statute or an act of assembly to establish a private police department or such entity's
83 successor in interest, provided it complies with the requirements set forth herein. No entity is authorized
84 to operate a private police department or represent that it is a private police department unless such
85 entity has been authorized by statute or an act of assembly or such entity is the successor in interest of
86 an entity that has been authorized pursuant to this section, provided it complies with the requirements
87 set forth herein. The authority of a private police department shall be limited to real property owned,
88 leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous
89 property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the
90 local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The
91 chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum
92 of understanding with the private police department that addresses the duties and responsibilities of the
93 private police department and the chief law-enforcement officer in the conduct of criminal investigations.
94 Private police departments and private police officers shall be subject to and comply with the
95 Constitution of the United States; the Constitution of Virginia; the laws governing municipal police
96 departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721,
97 and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable
98 to private police departments. Any person employed as a private police officer pursuant to this section
99 shall meet all requirements, including the minimum compulsory training requirements, for
100 law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits
101 under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a
102 "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of
103 the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an
104 employee of the Commonwealth or any locality. An authorized private police department may use the
105 word "police" to describe its sworn officers and may join a regional criminal justice academy created
106 pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in
107 existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and
108 whose status as a private police department was recognized by the Department at that time is hereby
109 validated and may continue to operate as a private police department as may such entity's successor in
110 interest, provided it complies with the requirements set forth herein.

111 "School resource officer" means a certified law-enforcement officer hired by the local
112 law-enforcement agency to provide law-enforcement and security services to Virginia public elementary
113 and secondary schools.

114 "School security officer" means an individual who is employed by the local school board for the
115 singular purpose of maintaining order and discipline, preventing crime, investigating violations of school
116 board policies, and detaining students violating the law or school board policies on school property or at
117 school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of
118 all students, faculty, staff, and visitors in the assigned school.

119 "Unapplied criminal history record information" means information pertaining to criminal offenses
120 submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history
121 record of an arrested or convicted person (i) because such information is not supported by fingerprints

or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-176.1. Duties and responsibilities of local community-based probation officers.

A. Each local community-based probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local community-based probation by any judge of any court within the localities served;

2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;

3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;

4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol or prescribed medication;

5. Facilitate placement of offenders in substance abuse education or treatment programs and services or other education or treatment programs and services based on the needs of the offender;

6. Seek a *habeas corpus* from any judicial officer in the event of failure to comply with conditions of local community-based probation or supervision on the part of any offender provided that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

8. Provide information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a *habeas corpus* has been sought;

9. Keep such records and make such reports as required by the Department of Criminal Justice Services;

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require an offender to submit a sample for DNA analysis; ~~and~~

11. Monitor the collection and payment of restitution to the victims of crime for offenders placed on local supervised probation; *and*

12. *Determine by reviewing the offender's criminal history record at least 60 days prior to discharge whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) order the offender to report to the law-enforcement agency that made the arrest for such offense or to the Department of State Police and submit to having his fingerprints and photograph taken for each such offense, (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the offense does not appear on the offender's criminal history record, and (iii) verify that such fingerprints and photograph have been taken.*

B. Each local probation officer may provide the following optional services, as appropriate and when available resources permit:

1. Supervise local-responsible adult offenders placed on home incarceration with or without home electronic monitoring as a condition of local community-based probation;

2. Investigate and report on any local-responsible adult offender and prepare or facilitate the preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of probation;

3. Monitor placements of local-responsible adults who are required to perform court-ordered community service at approved work sites;

4. Assist the courts, when requested, by monitoring the collection of court costs and fines for offenders placed on local probation; and

5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the approval of the Department of Criminal Justice Services.

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge.

A. When a person is charged with a simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the commission of the offense; (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of

183 any local government relating to an assault or assault and battery against a family or household member;
184 (iii) (a) the person has not previously been convicted of an act of violence as defined in § 19.2-297.1 or
185 (b) if such person has been previously convicted of such an act of violence, the attorney for the
186 Commonwealth does not object to the deferral; (iv) the person has not previously had a proceeding
187 against him for violation of such an offense dismissed as provided in this section; (v) the person pleads
188 guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient
189 to find the person guilty of, simple assault in violation of subsection A of § 18.2-57 where the victim
190 was a family or household member of the person or a violation of § 18.2-57.2; and (vi) the clerk of
191 court has been provided with the fingerprint identification information or fingerprints of the person,
192 taken by a law-enforcement officer pursuant to § 19.2-390, or the fingerprints and photograph of the
193 person be taken by a law-enforcement officer; and (vii) the person consents to such deferral and to a
194 waiver of his right to appeal a finding of facts sufficient to justify a finding of guilt under this section
195 entered pursuant to subsection F for a violation of a term or condition of his probation. *If the court*
196 *defers further proceedings, at that time the court shall determine whether the clerk of court has been*
197 *provided with the fingerprint identification information or fingerprints of the person, taken by a*
198 *law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and*
199 *photograph of the person be taken by a law-enforcement officer.* A person may file a motion to
200 withdraw his consent to the deferral and waiver of his right to appeal within 10 days of the entry of the
201 order deferring proceedings on a form prescribed by the Office of the Executive Secretary of the
202 Supreme Court of Virginia. The court shall schedule a hearing within 30 days of receipt of the motion
203 and shall provide reasonable notice to the attorney for the Commonwealth and to the person and his
204 attorney, if any. If the person appears at the hearing and requests to withdraw his consent, the court
205 shall grant such request, enter a final order adjudicating guilt, and sentence the person accordingly. If
206 the person does not appear at the hearing, the court shall deny his request to withdraw his consent.

207 C. The court shall (i) where a local community-based probation services agency established pursuant
208 to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be
209 placed with such agency and require, as a condition of local community-based probation, the person to
210 successfully complete all treatment, education programs, or services, or any combination thereof,
211 indicated by an assessment or evaluation obtained by the local community-based probation services
212 agency if such assessment, treatment, or education services are available; or (ii) require successful
213 completion of treatment, education programs, or services, or any combination thereof, such as, in the
214 opinion of the court, may be best suited to the needs of the person.

215 D. The court shall require the person entering such education or treatment program or services under
216 the provisions of this section to pay all or part of the costs of the program or services, including the
217 costs of any assessment, evaluation, testing, education, and treatment, based upon the person's ability to
218 pay. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist
219 participants who are unable to pay the full costs of the required programs or services.

220 The court shall order the person to be of good behavior for a total period of not less than two years
221 following the deferral of proceedings, including the period of supervised probation, if available.

222 ~~The court shall, unless done at arrest, order the person to report to the original arresting~~
223 ~~law-enforcement agency to submit to fingerprinting.~~

224 E. Upon fulfillment of the terms and conditions specified in the court order, *and upon determining*
225 *that the clerk of court has been provided with the fingerprint identification information or fingerprints of*
226 *such person*, the court shall discharge the person and dismiss the proceedings against him. Discharge
227 and dismissal under this section shall be without adjudication of guilt and is a conviction only for the
228 purposes of applying this section in subsequent proceedings. No charges dismissed pursuant to this
229 section shall be eligible for expungement under § 19.2-392.2.

230 F. Upon violation of a term or condition of supervised probation or of the period of good behavior,
231 the court may enter an adjudication of guilt and proceed as otherwise provided by law. Any person
232 placed on probation pursuant to this section who is subsequently adjudicated guilty upon a violation of a
233 term or condition of his probation shall have no right of appeal on such adjudication.

234 G. Notwithstanding any other provision of this section, whenever a court places a person on
235 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
236 for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7.

237 **§ 18.2-251. Persons charged with first offense may be placed on probation; conditions;**
238 **substance abuse screening, assessment treatment and education programs or services; drug tests;**
239 **costs and fees; violations; discharge.**

240 Whenever any person who has not previously been convicted of any offense under this article or
241 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,
242 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of
243 such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to
244 possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1,

the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. *If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.*

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. In addition to any community service required by the court pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with a plan of 50 hours of community service. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, *and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person*, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. However, if the court places an individual on probation upon terms and conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1 was committed while such person was in operation of a motor vehicle. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith

release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. ~~Any~~ *Unless otherwise authorized by law, any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § 19.2-390 pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.*

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388.

§ 19.2-232. What process to be awarded against accused on indictment, etc.

When an indictment or presentment is found or made, or information filed, the court, or the judge thereof, shall award process against the accused to answer the same, if he be not in custody. Such process, if the prosecution be for a felony, shall be a capias; if it be for a misdemeanor, for which imprisonment may be imposed, it may be a capias or summons, in the discretion of the court or judge; in all other cases, it shall be, in the first instance a summons, but if a summons be returned executed and the defendant does not appear, or be returned not found, the court or judge may award a capias. The officer serving the summons or capias shall also serve a copy of the indictment, presentment, or information therewith.

If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subsection A of § 19.2-390, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense pursuant to subsection A of § 19.2-390.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to

pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints are not on file or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

§ 19.2-303.02. Modification of conditions of suspended sentence or probation to require fingerprinting.

In any case where the court has suspended the imposition or execution of a sentence or placed the defendant on probation, the court may modify the sentence or conditions of probation at any time within the period of suspension or supervision to require that the fingerprints and photograph of the defendant be taken by a law-enforcement officer as a condition of that suspended sentence or probation, but only upon a hearing after reasonable notice to both the defendant and the attorney for the Commonwealth.

§ 19.2-303.2. Persons charged with first offense may be placed on probation.

Whenever any person who has not previously been convicted of any felony pleads guilty to or enters

a plea of not guilty to any crime against property constituting a misdemeanor, under Articles 5, 6, 7 and 8 of Chapter 5 (§ 18.2-119 et seq.) of Title 18.2, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation subject to terms and conditions, which may include restitution for losses caused, set by the court. *If the court defers further proceedings for an offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the accused, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the accused be taken by a law-enforcement officer.* Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person for an offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purpose of applying this section in subsequent proceedings.

§ 19.2-305.1. Restitution for property damage or loss; community service.

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages. Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the

terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. The clerk shall record receipt of restitution payments in an automated financial management system operated and maintained by the Executive Secretary of the Supreme Court or such other system established and maintained by a circuit court clerk pursuant to § 17.1-502. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment, and the victim's name and contact information, including the victim's home address, telephone number, and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge. Except as provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.

F. 1. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that includes a period of active supervision, the probation agency supervising the defendant shall notify the court and the attorney for the Commonwealth of the amount of any restitution that remains unsatisfied and the last known address for the defendant (i) 60 days prior to the defendant's release from supervision pursuant to the terms of the sentencing order or (ii) if the agency requests that the defendant be released from supervision, at the time the agency submits its request to the court. Such notice shall be in writing and the attorney for the Commonwealth shall, if practicable, provide a copy of the notice to the victim. If any amount of restitution remains unsatisfied, the court shall conduct a hearing prior to the defendant's release from supervision after providing notice of the hearing to the defendant and the attorney for the Commonwealth. If the court finds that the defendant is not in compliance with the restitution order, the court may (a) release the defendant from supervision, (b) modify the period or terms of supervision pursuant to § 19.2-304, (c) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (d) proceed in accordance with subsection E of § 19.2-358. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. Any defendant who is released from supervision shall be subject to the provisions of subdivision 3.

2. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that does not include a period of active supervision, the court shall include in the order a date, not to exceed two years from the date of the entry of the order or, if the court has sentenced the defendant to an active term of incarceration, from the date of the defendant's release from incarceration, on which the defendant's compliance with the restitution order shall be reviewed and the court shall schedule a hearing for such date. The court may, on its own motion, cancel the hearing if the amount of restitution has been satisfied. If at the hearing the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. After the hearing conducted pursuant to this subdivision, the defendant shall be subject to the provisions of subdivision 3.

3. If any amount of restitution remains unsatisfied at the time of a hearing conducted pursuant to subdivision 1 or 2, the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount of restitution has been satisfied and provide notice of such hearings to the defendant. The court may, on its own motion, cancel any such hearing if the amount of restitution has been satisfied or if the defendant is in compliance with the restitution order. If at any hearing conducted pursuant to this subdivision the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall follow the procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order

552 by a defendant (a) until the amount of restitution has been satisfied or (b) if any amount of restitution
553 remains unsatisfied, for the longer of 10 years from the date of the hearing held pursuant to subdivision
554 1 or 2 or the period of probation ordered by the court.

555 4. If the court determines at any hearing conducted pursuant to this subsection that the defendant is
556 unable to pay restitution and will remain unable to pay restitution for the duration of the review period
557 set forth in subdivision 3, the court may discontinue any further hearings to review a defendant's
558 compliance with the restitution order.

559 5. If the court determines that a defendant would be incarcerated on the date of any hearing
560 scheduled pursuant to this subsection, the court may remove the case from the docket, reschedule such
561 hearing to a date after the defendant's release from incarceration, and provide notice of the hearing to
562 the defendant and the attorney for the Commonwealth. If the defendant who is on probation that
563 includes a period of active supervision is incarcerated, the probation agency supervising the defendant
564 shall notify the court when the defendant has been released from incarceration.

565 6. No provision of this subsection shall be construed to prohibit the court from exercising any
566 authority otherwise granted by law over a defendant during any period of probation ordered by the
567 court.

568 7. *At every hearing conducted pursuant to subdivision 1 where the defendant was convicted of an*
569 *offense for which a report to the Central Criminal Records Exchange is required under subsection A of*
570 *§ 19.2-390, if the court has not previously verified that the conviction for such offense appears on the*
571 *criminal history record of the defendant, the court shall review the criminal history record of the*
572 *defendant and determine whether the present conviction appears on that record. The probation officer*
573 *for the defendant shall provide the criminal history record to the court at such hearing. If the present*
574 *conviction does not appear on the criminal history record, the court shall order that the fingerprints*
575 *and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central*
576 *Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such*
577 *conviction, the probation officer shall provide written or electronic notification to the Central Criminal*
578 *Records Exchange within the Department of State Police that the conviction does not appear on the*
579 *offender's criminal history record prior to his release from supervision.*

580 8. *At every hearing conducted pursuant to subdivision 2 where the attorney for the Commonwealth*
581 *participated in the prosecution and the defendant was convicted of an offense for which a report to the*
582 *Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not*
583 *previously verified that the conviction for such offense appears on the criminal history record of the*
584 *defendant, the court shall review the criminal history record of the defendant and determine whether the*
585 *present conviction appears on that record. If the attorney for the Commonwealth participated in the*
586 *prosecution of the offense, the attorney for the Commonwealth shall provide the criminal history record*
587 *to the court at such hearing. If the present conviction does not appear on the criminal history record,*
588 *the court shall order that the fingerprints and photograph of the defendant be taken by a*
589 *law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a*
590 *photograph have previously been taken for such conviction, the attorney for the Commonwealth shall*
591 *provide written or electronic notification to the Central Criminal Records Exchange within the*
592 *Department of State Police that the conviction does not appear on the offender's criminal history record.*

593 G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the
594 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the
595 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before
596 either such action is taken.

597 H. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be
598 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the
599 court. For purposes of this subsection, "victim" means a person who is depicted in a still or
600 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

601 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
602 18.2-374.1:1, or 18.2-374.3.

603 I. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no
604 longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal
605 Injuries Compensation Fund for the benefit of crime victims by November 1 of each year. If a clerk
606 does not have any such restitution to deposit, the clerk shall provide a statement to that effect to the
607 Fund by November 1 of each year. The administrator shall reserve a sum sufficient in the Fund from
608 which he shall make prompt payment directly to the victim for any proper claims. When depositing such
609 restitution to the Fund, the clerk shall report the victim's last known contact information, including the
610 victim's home address, telephone number, and email address, and the amount of restitution being
611 deposited for that victim. Before making the deposit, the administrator shall record the name, contact
612 information, and amount of restitution being deposited for each victim appearing from the clerk's report
613 to be entitled to restitution. The victim's contact information reported to the Fund shall be confidential

and shall not be disseminated further except as otherwise required by law.

J. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon presentation by the Fund of a written request that sets forth the amount of payments made by the Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the victim or on the victim's behalf.

K. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any fine, forfeiture, penalty, or cost assessed against the defendant.

§ 19.2-388. Duties and authority of Exchange.

A. It shall be the duty of the Central Criminal Records Exchange to receive, classify, and file criminal history record information as defined in § 9.1-101 and other records required to be reported to it by §§ 16.1-299 and 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies; to clerks of circuit courts, general district courts, and juvenile and domestic relations district courts; and to corrections and penal officials, forms ~~which~~ that shall be used for the making of such reports.

B. Juvenile records received pursuant to § 16.1-299 shall be maintained separately from adult records.

C. *The Exchange shall submit periodic reports to the Office of the Executive Secretary of the Supreme Court of Virginia, the clerk of each circuit court and district court, attorneys for the Commonwealth, and law-enforcement agencies containing a list of offenses with unapplied criminal history record information. Reports to the Office of the Executive Secretary of the Supreme Court of Virginia shall be quarterly and shall include all such offenses within the Commonwealth identified by jurisdiction and by court. Reports to the clerk of each circuit court and district court shall be quarterly and shall include only such offenses that were submitted by the respective clerk of court. Reports to attorneys for the Commonwealth shall be quarterly and shall include only such offenses that were submitted by law-enforcement agencies and courts in the county or city served by the respective attorney for the Commonwealth. Reports to law-enforcement agencies shall be monthly and shall include only such offenses for which the respective law-enforcement agency executed the arrest or issued the summons. For each offense, the report shall include, if known, the name and any other identifying information of the defendant, any identifying court case information, the date of submission to the Exchange, and the reason the offense could not be applied to the criminal history record.*

D. *The Exchange shall review offenses containing unapplied criminal history record information and shall make reasonable efforts to ensure that such information, including any offense of which the Exchange is notified pursuant to subdivision A 12 of § 9.1-176.1, subdivision F 7 or 8 of § 19.2-305.1, subsection B of § 53.1-23, or subdivision 13 or 14 of § 53.1-145, is applied to criminal history records. The Exchange may request and shall receive from the clerk of each circuit court and district court, attorneys for the Commonwealth, law-enforcement agencies, the Department of Corrections, the Department of Forensic Science, and local probation and community corrections agencies cooperation and assistance to obtain positive identification or to reconcile any inconsistencies, errors, or omissions within such unapplied criminal history record information.*

E. *The Exchange shall submit a report to the Governor and General Assembly on or before November 1 of each year on the status of unapplied criminal history record information and any updates to fingerprinting policies and procedures. The report shall include the following, if known: (i) the total number of offenses submitted to the Exchange, identified by the year of the offense and the year the charge was filed for such offense, that contain unapplied criminal history record information and cannot be applied to criminal history records; (ii) the number of such offenses submitted to the Exchange without fingerprints or positive identification and the law-enforcement agencies that submitted those offenses; (iii) the number of such offenses submitted to the Exchange with an inconsistency, error, or omission and, for those offenses, the jurisdiction from which the offense was submitted; and (iv) efforts made by the Exchange to ensure that unapplied criminal history record information is applied to criminal history records, including any offenses of which the Exchange was notified pursuant to subdivision A 12 of § 9.1-176.1, subdivision F 7 or 8 of § 19.2-305.1, subsection B of § 53.1-23, or subdivision 13 or 14 of § 53.1-145.*

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,

on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, *for each charge when any person is arrested* on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1; or
- d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or
- e. *Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.*

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested *for each charge*. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court *defers* or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed *for each charge* after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

3. *For persons arrested on a capias for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.*

4. *For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is found to be in violation of the terms or conditions of a suspended sentence or probation for such felony offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.*

5. *If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense.*

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal

Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias* to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. ~~The~~ *For offenses not charged on a summons in accordance with § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which that may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act which that, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; [or] (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered [÷ or (d) any finding is made that the person . The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons] is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which that he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or *capias* into the VCIN.*

D. In addition to those offenses enumerated in subsection A ~~of this section~~, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections for any person in the custody of such correctional institution may be classified and filed as part of the criminal history record information of that person.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this

chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

I. As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

§ 19.2-390.03. Development and dissemination of model policy on fingerprinting and reports to the Central Criminal Records Exchange.

The Department of State Police shall develop a model policy on the collection of fingerprints and reporting of criminal history record information to the Central Criminal Records Exchange as required by § 19.2-390. The Department shall disseminate such policy to all law-enforcement agencies within the Commonwealth.

§ 19.2-392. Fingerprints and photographs by police authorities.

A. All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of: (i) any person arrested by them and charged with a felony or a misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange, or (ii) any person who pleads guilty or is found guilty after being summoned in accordance with § 19.2-74, or (iii) any person charged with an offense that has been deferred by the court pursuant to §§ 18.2-57.3, 18.2-251, or 19.2-303.2. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.

B. Such police authorities may establish and collect a reasonable fee not to exceed \$10 for the first card and \$5 for each successive card for the taking of fingerprints when voluntarily requested by any person for purposes other than criminal violations.

§ 53.1-23. Fingerprints, photographs and description.

A. Photographs, fingerprints, and a description of each person received by the Department shall be taken and filed for identification purposes. *If the person is serving a sentence for an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, such photographs, fingerprints, and description of such person received by the Department shall be provided to the Central Criminal Records Exchange and, unless otherwise prohibited by law, may be classified and filed as part of the criminal history record information of that person.* Subject to the provisions of §§ 19.2-387 through 19.2-392, the Department shall cooperate with federal, state, county, and city law-enforcement agencies, insofar as it may deem proper, in disclosing information concerning such persons and in the taking of fingerprints and photographs of persons charged with the commission of a felony ~~an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390.~~

B. *The Department shall review each person's criminal history record at least 60 days prior to his scheduled release from a state correctional facility to determine whether all offenses for which that person has been committed appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the person to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange*

within the Department of State Police that such offense does not appear on the offender's criminal history record prior to his release from the state correctional facility.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Board;

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon the certification of appropriate training and specific authorization by a judge of a circuit court;

8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-912;

9. Pursuant to any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to submit a sample for DNA analysis;

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would be considered a felony, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth; ~~and~~

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation;

13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the offender is scheduled to be released from supervision within less than 60 days, to determine whether all offenses for which the offender is being supervised appear on such record and, if any such

ENGROSSED

SB1602ES1

921 offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390
922 does not appear, (i) take and provide fingerprints and a photograph of the offender to the Central
923 Criminal Records Exchange to be classified and filed as part of the criminal history record information
924 pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central
925 Criminal Records Exchange within the Department of State Police that such offense does not appear on
926 the offender's criminal history record; and

927 14. Upon intake of any offender on or after July 1, 2019, (i) take and provide fingerprints and a
928 photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part
929 of the criminal history record information pursuant to subsection D of § 19.2-390, (ii) review the
930 criminal history record of the offender to determine whether all offenses for which the offender is being
931 supervised appear on such record, and (iii) if any such offense that is required to be reported to the
932 Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, provide written or
933 electronic notification to the Central Criminal Records Exchange within the Department of State Police
934 that such offense does not appear on the offender's criminal history record.

935 Nothing in this article shall require probation and parole officers to investigate or supervise cases
936 before general district or juvenile and domestic relations district courts.

937 **§ 53.1-165. Revocation of parole or postrelease supervision; hearing; procedure for parolee or**
938 **felon serving period of postrelease supervision in another state; appointment of attorney.**

939 A. Whenever any parolee or felon serving a period of postrelease supervision is arrested and
940 recommitted as provided herein, a preliminary hearing to determine probable cause that such parolee has
941 violated one or more of the terms or conditions upon which he was released on parole or postrelease
942 period of supervision shall be held by any hearing officer who has been designated as such by the
943 Director of the Department to conduct such hearings. However, if a nolle prosequi is to be entered in a
944 case where a parole violation is alleged, no preliminary hearing shall be required.

945 Upon request of the hearing officer, the attorney for the Commonwealth of the jurisdiction within
946 which such hearings are to be held shall request the circuit court of such jurisdiction to appoint one or
947 more discreet attorneys-at-law to represent parolees in any proceedings held before him. Each attorney
948 so appointed shall be available to serve upon request of the hearing officer. The term of each attorney's
949 appointment shall continue until such time as a successor may be appointed. A hearing officer shall be
950 authorized to issue subpoenas requiring the attendance of witnesses and the production of records,
951 memoranda, papers and other documents before him and to administer oaths and to take testimony
952 thereunder.

953 Upon a finding of probable cause by the hearing officer, the Board or its authorized representative
954 shall conduct a hearing, consider the case and act with reference thereto within a reasonable time
955 thereafter. Upon request of the Board, the attorney for the Commonwealth of the jurisdiction within
956 which such hearings are to be held shall request the circuit court of that jurisdiction to appoint one or
957 more discreet attorneys-at-law to represent parolees in proceedings held or to be held before the Board.
958 Each attorney shall be available to serve upon request of the Board. The term of each attorney's
959 appointment shall continue until such time as a successor may be appointed. The Board, in its
960 discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion
961 of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon
962 such terms and conditions as were originally prescribed, or as may be prescribed in addition thereto or
963 in lieu thereof. When a parole violation is based on a new felony conviction for which the individual
964 has been sentenced to two or more years, excluding any time of said sentence which has been
965 suspended, any individual Board member, so authorized by the Board, may after such hearing revoke the
966 individual's parole as otherwise provided herein.

967 Upon revocation of parole for any felony offense, the Board or its authorized representative shall
968 order that the Department of Corrections take fingerprints and a photograph of the person for each
969 offense and transmit such information to the Central Criminal Records Exchange pursuant to subsection
970 D of § 19.2-390.

971 B. In cases in which a parolee or felon serving a period of postrelease supervision is in another state,
972 any hearing officer who has been designated as such by the Director of the Department may be sent to
973 that state to conduct a preliminary hearing to determine probable cause that the parolee has violated one
974 or more of the terms and conditions upon which he was released upon parole.

975 C. Any attorney-at-law appointed pursuant to this section shall be paid as directed by the court
976 making the appointment, from funds appropriated for court costs and expenses, reasonable compensation
977 on an hourly basis and necessary expenses, based upon a report to be furnished to it by such attorney.
978 In the event an attorney-at-law is appointed in another state, he shall be paid out of funds appropriated
979 to the Department.

980 2. § 1. The Department of State Police shall make reasonable efforts to ensure that criminal history
981 record information that was reported to the Central Criminal Records Exchange pursuant to § 19.2-390
982 of the Code of Virginia prior to July 1, 2019, and not applied to the criminal history record of a person

983 *be applied to the criminal history record of that person. Such efforts shall prioritize identifying any*
984 *felony convictions that have not been applied to criminal history records and providing such information*
985 *to the law-enforcement agency that made the arrest and to the attorney for the Commonwealth in the*
986 *jurisdiction where the conviction was entered. All state and local government agencies shall provide*
987 *such assistance as may be requested by the Department of State Police to aid in the successful and*
988 *timely completion of these efforts. Notwithstanding any other provision of law to the contrary, the*
989 *Department of State Police and other state and local government agencies may receive from and*
990 *disseminate to individuals, state agencies, and local government agencies any information that may be*
991 *necessary for the successful and timely completion of these efforts. The Department of State Police shall*
992 *report on the progress of these efforts to the Governor and the Chairman of the Virginia State Crime*
993 *Commission by November 1, 2019.*

994 **3. That the Department of State Police, in coordination with the Department of Criminal Justice**
995 **Services, shall develop a form to be used by local community-based probation officers when**
996 **ordering an offender to report to a law-enforcement agency or to the Department of State Police**
997 **and submit to having his fingerprints and photograph taken pursuant to the provisions of**
998 **subdivision A 12 of § 9.1-176.1 of the Code of Virginia, as amended by this act. Such form shall**
999 **include information necessary for that law-enforcement agency or the Department of State Police**
1000 **to ensure that the fingerprints and photograph of the offender can be applied to his criminal**
1001 **history record for each offense that does not appear on the criminal history record. Such form**
1002 **shall include a portion that is returnable to the local community-based probation office by the**
1003 **law-enforcement agency or Department of State Police and a portion to be provided to the**
1004 **offender after fingerprints and a photograph have been taken.**

ENGROSSED

SB1602ES1